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EUROPEAN COURT: Armenia responsible for a conscript's death

Armenian military authorities put conscript's life in danger: he died

Registrar of the European Court (11.10.2022) – In today's **Chamber** judgment in the case of **Ashot Malkhasyan v. Armenia** (application no. 35814/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 – substantive aspect (right to life) of the European Convention on Human Rights, and

a violation of Article 2 – procedural aspect (right to life: obligation to conduct an effective investigation).

The case concerned the death of the applicant's son at the age of 22, within days of being drafted into the army, following the military authorities' decision that he was fit to undertake compulsory military service despite his significant health problems.

The Court found in particular that the authorities had unjustifiably put the applicant's son's life in danger when they decided to call him up, and that the authorities had then failed to conduct an effective investigation into the matter.

Principal facts

The applicant, Ashot Malkhasyan, is an Armenian national who was born in 1946 and lives in Yerevan.

In the summer of 2008, his 21-year-old son, A. Malkhasyan, was taken ill and was diagnosed with cardiac incompetence, reflux oesophagitis (inflammation of the oesophageal mucosa), laceration of the mucous membrane of the cardia, Mallory-Weiss syndrome (bleeding from a tear or laceration of the mucous membrane between the stomach and oesophagus), superficial gastritis and established bleeding.

In December 2008 A. Malkhasyan underwent further medical examinations and was diagnosed with, amongst other things, a hiatal hernia and Gilbert's syndrome (elevated levels of unconjugated bilirubin in the bloodstream). He was prescribed medication, put on a special diet and advised to sleep with his head raised, to avoid bending over, and not to lift anything heavy.

The following March, he was called to the Arabkir military

commissariat for a preliminary medical examination for military service. He submitted his medical records to the relevant commission and asked to undergo a thorough examination. That request, and a subsequent two made by the applicant, were all refused by the Arabkir military commissar, A.U., who stated that, in any event, he would be found fit for conscription. Nevertheless, similar requests to the Military Commissar of Armenia and the Chief of Staff of the Armenian Defence Forces resulted in his being referred for further examinations from 15 to 19 June 2009 at Erebuni Medical Centre in Yerevan.

A. Malkhasyan was examined by specialists, including a gastroenterologist and a neurologist. On the instructions of A.U., the surgeon of the Arabkir military commissariat medical commission was also present. On 19 June 2009 the Erebuni Medical Centre delivered a final diagnosis of gastrointestinal motility disorders induced by psychological stress. However, that conclusion did not reflect the previous diagnoses including Mallory-Weiss syndrome nor even the results of the medical tests carried out that week by the gastroenterologist and neurologist of the medical centre.

A.U. then ordered the removal of ten documents from his medical records. During his questioning he stated that he and the medical commission of the military commissariat had had doubts as to whether A. Malkhasyan was actually ill.

The surgeon of the Central Medical Commission, A.Uz., concluded that no surgical pathology had been found. On 25 June 2009 the commission found A. Malkhasyan fit for military service and sent him to his assigned military unit. On 4 July 2009 A. Malkhasyan lost consciousness and was taken to a local military hospital. The following day, in a coma, he was flown by air ambulance to the Central Military Hospital in Yerevan, where he died later that day.

An internal investigation ordered by the Minister of Defence

found that, had the military commissariat and the Central Medical Commission properly examined his medical records, he would not have been found fit for military service. An autopsy report concluded that the cause of his death was coronary artery disease, and that he had also suffered from Mallory-Weiss syndrome, chronic oesophagitis and chronic gastritis.

Charges were brought against the head of the Conscript Assembly Point Medical Commission and two members of the Central Medical Commission. An ensuing combined forensic medical and military examination concluded in September 2011 that A. Malkhasyan's death could have been linked to acute gastrointestinal bleeding (Mallory-Weiss syndrome) associated with covert pathological changes affecting the heart (coronary sclerosis, cardiosclerosis).

In July 2014 the investigator decided to discontinue the prosecution for lack of sufficient evidence of a crime and to terminate the criminal proceedings on the grounds that A. Malkhasyan's death had resulted from asymptomatic heart diseases, which had been aggravated due to the change in his lifestyle and routine, and could not have been detected even prior to conscription.

The applicant disputed the investigator's decision before the Military Prosecutor, who dismissed his complaint. His request for a judicial review was dismissed, as was a subsequent appeal to the Criminal Court of Appeal. His subsequent appeal on points of law was admitted for examination by the Court of Cassation which, in June 2015, quashed the first-instance and appellate decisions.

The criminal proceedings were resumed in November 2015, and the case was sent for further investigation. In February 2017 a commission of forensic and military medical experts was assigned to look into it.

In July 2017 the investigator decided to end the criminal

proceedings as the prosecution of the doctors of Erebuni Medical Centre and A.Uz. had become time-barred. He also decided not to prosecute A.U. as, although he had overstepped his public authority, there was no causal link between his actions and the damage occurred. He had not interfered with A. Malkhasyan's medical examinations, and the medical specialists of the Central Assembly Point had received A.Malkhasyan's previous diagnoses from the applicant, who had transmitted the relevant documents to the head of its medical commission.

Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life) and 13 (right to an effective remedy) of the European Convention on Human Rights, the applicant complained about the death of his son during military service, and the failure of the authorities to carry out an effective investigation into the matter.

The Court decided to examine the complaints under Article 2 alone.

The application was lodged with the European Court of Human Rights on 23 July 2014. Judgment was given by a Chamber of seven judges, composed as follows:

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Tim **Eicke** (the United Kingdom),
Yonko **Grozev** (Bulgaria),
Armen **Harutyunyan** (Armenia),

Pere **Pastor Vilanova** (Andorra), Jolien **Schukking** (the Netherlands), Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar*. Decision of the Court

The Court considered that the conduct of the military authorities of the Arabkir military commissariat and the Central Medical Commission, that is to say A.U. and A.Uz., as

well as that of the members of the Erebuni Medical Centre expert commission went beyond an error of judgment or carelessness, and engaged the State's responsibility under Article 2 of the Convention. It noted that A.U., who had had a negative predisposition towards A. Malkhasyan and the applicant from the outset, had apparently done everything possible to have him drafted into the army, even falsifying his medical file before submitting it to the Conscript Assembly Point.

In that light, the Court found that the military authorities and the medical professionals involved in A. Malkhasyan's conscription – in reckless disregard of his medical history, including his emergency hospitalisation less than a year before – had actively contributed to the decision that he was fit for military service. As was established during the investigation, that decision had resulted in his death within ten days of his starting his service. The Court therefore concluded that the authorities had unjustifiably put his life in danger when they decided to call him up, thus failing to comply with their obligation under Article 2 of the Convention to protect his life.

There had accordingly been **a violation of the substantive limb of Article 2 of the Convention.**

The Court also found that only an effective criminal investigation could satisfy the procedural obligation imposed by Article 2 as a result of such conduct. However, the eight-year investigation into his death had been terminated as a result of the decisions in July 2017 not to prosecute the members of the Erebuni Medical Centre expert commission and A.Uz on account of the statutory limitation period and, in so far as A.U. was concerned, on account of a lack of sufficient evidence of a crime in his actions.

It noted that in June 2015 the Court of Cassation had essentially found that the investigation, which had started

six years previously, had been ineffective and unreasonably lengthy. The Court therefore examined the part of the investigation which had taken place after that. It observed that it had not been resumed until five months later, on 5 November 2015. The investigator had taken a number of investigative steps, in particular, interviewing further the doctors of the Erebuni Medical Centre, and members and staff of the military medical commissions involved in the procedure, and also obtaining an additional medical expert report more than a year after the proceedings had been resumed. However, the investigator had still failed to establish why the doctors of the Erebuni Medical Centre had failed to fully and objectively assess A. Malkhasyan's state of health and, more importantly, whether their professional activity had been affected by the presence of a representative of the Arabkir Military Commissariat, as ordered by A.U., during the medical examinations. Moreover, the reason why A.U. had ordered the removal of important medical documents from A. Malkhasyan's file had still not been clarified. The Court noted that the decision not to prosecute A.U. merely stated, without reference to any evidence, that the representative of the Arabkir Military Commissariat had not interfered with A. Malkhasyan's medical examinations.

As regards the decision not to prosecute the members of the Erebuni Medical Centre expert medical commission and A.Uz. on account of the statutory limitation period, the Court noted that the Court of Cassation had found in its decision of 15 June 2015 that when the investigation had been terminated for the first time on 17 July 2014, the case file had contained a "significant body of evidence" substantiating that A. Malkhasyan's state of health had not been objectively and fully assessed by the doctors of the centre and that the results of the examinations that had been carried out had not been fully reflected in their conclusion. However, it was not until July 2017 that the investigator considered it established that they had failed to properly fulfil their

obligations.

The Court observed that, although the expert report issued after the reopening of the proceedings did state more specifically that A. Malkhasyan's previous diagnosis of Mallory-Weiss syndrome – which was believed to have been the cause of gastrointestinal bleeding resulting in cardiac arrest – should have been included in the conclusion concerning his state of health, an expert report in September 2009 had already found that the sharp deterioration in A. Malkhasyan's health and his subsequent death had possibly been linked to acute gastrointestinal bleeding. In those circumstances, it was not clear why the investigator had initially brought charges against other members of the Central Medical Commission but not against A.Uz., the surgeon of the same commission who had in fact reached the conclusion that A. Malkhasyan had no surgical pathology, nor against the members of the Erebuni Medical Centre expert commission who had issued the incomplete and inaccurate medical opinion which had served as the basis for the Central Medical Commission's decision in the first place. As a result, the prosecution of those individuals after more than eight years after the events had become time-barred.

The Court concluded that the authorities had failed to conduct an effective investigation and that there had therefore been **a procedural violation of Article 2 of the Convention.**

Just satisfaction (Article 41)

The Court held that Armenia was to pay the applicant 35,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 in respect of costs and expenses.

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